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HOUSE BILL 446

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Al Park

AN ACT

RELATING TO RETIREMENT BENEFITS; PROVIDING FOR THE FORFEITURE OF CERTAIN RIGHTS AND BENEFITS UNDER THE STATE RETIREMENT SYSTEMS UPON THE CONVICTION FOR CERTAIN CRIMES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. FORFEITURE OF PENSION FOR CERTAIN PENALTY CONVICTIONS.--

A. As used in this section:

(1) "conviction" means a judgment of guilty of a felony or acceptance of a plea of nolo contendere to a felony charge by a state or federal court of competent jurisdiction;

(2) "felony" means a crime designated by law as a felony or a crime for which the authorized penalty is imprisonment for one year or more;

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1 (3) "forfeited member" means an individual
2 who, under a court order issued pursuant to this section, has
3 forfeited pension rights in a state system;

4 (4) "member" means an individual who is
5 classified as a "member" of a state system pursuant to the laws
6 governing that state system;

7 (5) "member contributions" means the amounts
8 deducted from a member's salary and credited to the member's
9 account in a state system, together with interest, if any,
10 credited to that account;

11 (6) "public employment" means a position held
12 as an elected or appointed official or as an employee of the
13 state or one of its agencies, departments, political
14 subdivisions or institutions;

15 (7) "retired member" means an individual who
16 has retired and is receiving a pension from a state system; and

17 (8) "state system" means a retirement program
18 provided for in the Educational Retirement Act, the Public
19 Employees Retirement Act, the Magistrate Retirement Act or the
20 Judicial Retirement Act.

21 B. If, in the adjudication of a felony in a New
22 Mexico district court, it appears that the defendant is a
23 member or retired member and that the felony is one arising
24 from conduct related to the member's or retired member's public
25 employment, the district attorney or attorney general shall, in

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1 addition to the felony complaint, file for an order of
2 forfeiture of pension. Upon the filing, the forfeiture of
3 pension proceeding shall be brought in the same proceeding as
4 the criminal matter and presented to the same trier of fact;
5 provided that:

6 (1) the two issues shall be bifurcated;

7 (2) the rules of criminal procedure shall
8 apply in the criminal matter and the rules of civil procedure
9 shall apply in the forfeiture proceeding;

10 (3) if the criminal defendant is represented
11 by the public defender department, the chief public defender or
12 the district public defender may authorize department
13 representation of the defendant in the forfeiture proceeding;
14 and

15 (4) if the state proves by clear and
16 convincing evidence that the defendant is a member or retired
17 member and has been convicted of a felony arising out of
18 conduct related to the member's or retired member's public
19 employment, the court may order the forfeiture of the member's
20 or retired member's right to a pension and other retirement
21 benefits from a state system and serve the order upon the
22 appropriate state system.

23 C. Upon a person's initial conviction in a court of
24 another state or a federal court of a felony that appears to
25 arise out of conduct related to public employment, the attorney

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1 general or a district attorney shall initiate the forfeiture of
2 a state system pension by filing for an order of forfeiture of
3 pension with the district court for the county of Santa Fe or
4 the district court for the county in which the member or
5 retired member resides or in which the member or retired member
6 was engaged in public employment. If, after notice and
7 hearing, the state proves, by clear and convincing evidence,
8 that the person is a member or retired member, that the member
9 or retired member was convicted of a felony and that the felony
10 was one arising out of conduct related to the member's or
11 retired member's public employment, the court may order the
12 forfeiture of the member's or retired member's right to a
13 pension and other retirement benefits from a state system and
14 notify the appropriate state system of the order.

15 D. After receipt by a state system of an order
16 issued pursuant to Subsection B or C of this section:

17 (1) except as provided in Paragraph (5) of
18 this subsection, the state system shall revoke the forfeited
19 member's service credit;

20 (2) if the forfeited member is not currently
21 receiving a pension, except as provided in Paragraph (4) of
22 this subsection, the state system shall refund member
23 contributions to the forfeited member;

24 (3) if the forfeited member is currently
25 receiving a pension, except as provided in Paragraph (4) or (5)

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1 of this subsection, the state system shall cease paying a
2 pension and shall refund member contributions to the forfeited
3 member less any pension amounts already received;

4 (4) if, prior to the order of forfeiture, a
5 court has issued an order pursuant to Section 10-11-136,
6 10-11-136.1, 10-12B-7, 10-12C-7 or 22-11-42 NMSA 1978, then any
7 action by a state system pursuant to Paragraph (2) or (3) of
8 this subsection shall be in compliance with the prior court
9 order; and

10 (5) if the forfeited member is currently
11 receiving a pension from a state system due to previous
12 employment but had subsequently returned to public employment
13 while continuing to receive the pension, the order shall not
14 affect the pension related to the previous employment if the
15 felony did not arise from conduct related to the previous
16 employment.

17 E. If, on final appeal, the court finding pursuant
18 to Subsection B or C of this section or the conviction is
19 overturned, the forfeiture order is voided and the member may
20 reinstate the forfeited service credit pursuant to the laws
21 governing the state system, provided that, notwithstanding any
22 law to the contrary, the state system shall waive any
23 requirement for the purchase of forfeited service credit.

24 Section 2. APPLICABILITY.--The provisions of this act
25 apply to crimes committed on or after the effective date of

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this act.

Section 3. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.

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